



United States
Department of
Agriculture

Forest
Service



November 2020

***Draft* Decision Notice and Finding of No Significant Impact Ochoco Wild Horse Herd Management Plan and Forest Plan Amendment**

Lookout Mountain and Paulina Ranger Districts, Ochoco National Forest
Crook County, Oregon

Legal Location: T. 13 S., R 20 E., Sections 20, 21, 27- 35; T. 13 S., R 19 E., Sections 34-36; T. 14 S., R. 19 E., Sections 1-4, 9-16, 21-24; T. 14 S., R. 20 E., Sections 2-10, 14-18.
Willamette Meridian

Predecisional Administrative Review Process:

This *draft* Decision Notice is made available with the final EA for this project pursuant to 36 CFR 218.7(b). The timeframe for the opportunity to object to this project will begin with publication of a legal notice in *The Bulletin* newspaper. The Forest anticipates that the legal notice will be published on November 17, 2020. See page 10 for more information on the predecisional administrative review process.

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Introduction

This draft Decision Notice (DN) documents my proposed selection of Alternative 2 of the September 2020 Ochoco Wild Horse Herd Management Plan Environmental Assessment (EA). Before a final decision is made, this DN is available for an objection process (see page 10 for details).

The wild horses reside on the Big Summit Wild Horse Territory, which is located on the Lookout Mountain Ranger District, Ochoco National Forest (see previous page for map). This decision addresses the need to update management guidance for the Ochoco Wild Horse Herd. Current direction is found in the 1989 Ochoco Land and Resource Management Plan and the 1975 Ochoco Wild and Free-Roaming Horse Management Plan and Environmental Analysis Report.

Decision and Rationale

My decision will do the following:

Establish an appropriate management level based on current conditions

Analysis of the Big Summit Territory determined that an appropriate management level (AML) for the Ochoco wild horse herd is 12 to 57 wild horses.

Management of the herd will be focused on maintaining wild horse numbers within the high end of the AML. The AML provides the context for determining if there are excess horses in the Territory. The Forest Plan is amended with this decision and provides for adjustment of the AML based on the conditions in the Territory (see EA Appendix A).

Authorize population growth control

The primary tools for controlling the Ochoco wild horse population and maintaining the herd size will be through the use of gathers and contraception.

Gather and Removal of Excess Wild Horses

Consecutive gathers will occur to attain and subsequently maintain wild horse numbers within, but near high AML. Highest priority will be to gather and remove wild horses residing outside of the Territory and in areas where resource damage is occurring due to over population. Second priority will be to gather and remove horses as necessary to achieve and maintain numbers below but near high AML. A selective removal criteria may be used for all gathers to facilitate meeting genetic variability and/or population growth rate objectives (based on consultation from wild horse genetic experts).

Gathers will occur as needed to maintain horse numbers within, but near high AML.

Bait trapping will be the primary gather method and may occur throughout the year. Six bait trap locations have been identified. Temporary structures will be erected for operations. Other sites can be used as needed for temporary bait trapping after being routed through specialists to address resource concerns.

Other gather methods, such as use of helicopters, fixed-wing aircraft and motor vehicles will follow direction in 36 CFR 22, Subpart D, 222.64.

Comprehensive Animal Welfare Best Management Practices (EA Appendix C) will be followed during gather operations.

Horses removed from the Territory would be 1) transported to the BLM Burns corral facility, or 2) transported to a Forest Service corral or to temporary/mobile corrals constructed by the Forest Service, or 3) transported to leased or contracted private facilities, where they will be prepared for adoption or sale.

Fertility Control Measures

Fertility control methods will be used to slow the population growth. Fertility control methods include contraception and sterilization.

Contraception will be the preferred method of fertility control. Contraception tools such as PZP will be utilized according to the Standard Operating Procedures outlined in Appendix E of the EA. The Forest Service will use contraceptives that have been approved by the Wild Horse and Burro Advisory Board and governing agencies and may use contraceptive methods that are approved in the future.

Sterilization of studs may be used to promote a sex ratio that favors a slower population growth and will follow Standard Operating Procedures outlined in Appendix E of the EA.

Ovariectomy or other methods to sterilize mares is not included in this decision.

Other methods to slow population growth would be considered only if approved by the Wild Horse and Burro Advisory Board or other governing agencies. Additional analysis and documentation under NEPA may be necessary to approve such methods.

Authorize actions to improve and maintain genetic variability

The herd will be managed for an acceptable level of genetic variability (observed heterozygosity values for DNA-based samples).

Genetic variability will be managed in consultation with wild horse genetics experts with the introduction of new mares from similar habitats. It may be necessary to introduce more than one or two young mares initially in order to increase genetic variability in a timely manner.

The Forest would establish baseline genetic variability by sampling a portion of the herd during the initial gather and removal operations conducted to reach AML under this Plan. Sampling will continue during subsequent maintenance gather operations to monitor changes in genetic variability over time.

Establish guidelines and adopt best management practices

Comprehensive Animal Welfare Best Management Practices, Emergency Action Framework, and Standard Operating Procedures for Wild Horse Population-Level Fertility Control Treatments

These documents are part of the management plan and serve as guidance for all of the management activities. These are found in the EA as EA Appendices C, D, and E.

Authorize an Off-Range Plan

All horses placed into private custody through adoption will have some form of unique identifier for future tracking (e.g. freeze brand).

Initially, attempts will be made to place excess wild horses in private care through adoption. The Forest Service or Forest Service-approved volunteer personnel would be responsible for adoption compliance inspections and subsequent title transfer of these animals.

Animals that meet the sale-eligibility criteria will be offered for sale. Animals must meet the sale-eligibility criteria under the WFRHB Act of 1971, Pub. L. 92-195, 1333 (e) 2004. While the Act as amended only addresses sale without limitation, subsequent enactment of riders prohibiting the BLM's and Forest Service's use of appropriated funds for the sale or slaughter of wild free-roaming horses and burros resulted in BLM's construction of a sale with limitation whereby purchasers declare in their purchase application to, "... not sell or transfer ownership of any such animals that I purchase to any person or organization that intends to resell, trade, or give away such animals for processing into commercial products." While current Forest Service policy is to follow the mandates of the Act as amended, it will comply with appropriations language limitations. Sales of excess wild horses without limitations, would be similar to the majority of livestock sales in the state whereby the owner has ultimate determination of the future use of the animal within the restrictions of state animal treatment and care laws. Sales of excess wild horses with limitations similar to those declared in the application to purchase BLM horses and burros would be expected to prevent the transfer of animals that previously had status as wild horses or burros for processing into commercial products. Under both types of sales, once sold, horses lose their protected status under the Act (16 U.S.C., Chap 30, §1333(e) (4)).

As a last resort, animals for which there is no adoption or sale demand would be euthanized in the most humane and cost-efficient manner possible (36 CFR 222.69 (5)).

Incorporate the following resource protect measures

Gather Operations / Locating Traps

- Consult District Archaeologist if new trap locations are needed to ensure they are not placed on cultural resource sites.
- See Invasive Plant Prevention Measures

Invasive Plant Prevention Measures

- The Forest Service would inspect equipment needed for moving horses off the Territory such as horse trailers or trap components. Vehicles requiring cleaning would be moved to a site designated by the Forest Service if cleaning is needed prior to the start of operations.
- During wild horse capture, existing non-native invasive plant infestations would be avoided to the greatest extent possible.
- Inform and include district invasive plant coordinator with project planning and implementation so that any newly discovered invasive plant infestations identified during implementation are documented and prioritized for treatment.
- Monitor trap sites for new and/or increased invasive plant populations.
- Management operations such as bait trapping would use only certified weed-free hay.

Botany Project Design Criteria for Sensitive Plants

- To protect sensitive species associated with riparian and scabland habitats, gathering and trapping would be avoided in these habitats unless approved by District Botanist.

Reasons for the Decision

Response of Alternative 2 to the Purpose and Need

The Forest Service conducted an analysis to determine the numbers of wild horses that can be sustained on the Big Summit Territory considering the existing conditions and other uses of the land. The entire AML analysis is described in Appendix B of the EA. By determining AML through best available scientific information and following established protocols, the decision best meets the purpose and need to ensure wild horses are managed in a thriving natural ecological balance with other uses and the productive capacity of their habitat.

Alternative 2 will meet species' needs within the wild horse winter range where forage in winter is a limiting factor. It is expected that allowable use will not be exceeded and with fewer horses congregating in riparian areas, it is expected that riparian conditions may improve and stream form and function are also expected to improve.

By importing wild horse mares from source herds as recommended by genetic experts, we expect to improve the genetic variability. Population control through the use of gathers and fertility control will have a positive effect on reach and maintaining AML. This decision incorporates Comprehensive Animal Welfare Best Management Practices.

Consideration of Public Comment

District Ranger Turner, the Interdisciplinary Team, and I have reviewed the comments we received during scoping and during the 30-day public comment period. Many people voiced their opinions and feelings about wild horses in general and management of the Ochoco wild horses in particular.

I received comments expressing concerns about the way the AML was determined. The analysis followed a three-tier process and is laid out in Appendix B of the EA. By evaluating the four essential habitat components (forage, water, cover, and space) we were able to describe how winter range forage availability is a limiting factor in the Territory: in winters when there is above-average snowfall, the amount of forage available in the winter range is sufficient for only a certain number of animals. I acknowledge the information about wild horses using areas outside the wild horse winter range during winter; however, forage use of areas outside of the estimated wild horse winter range during winters of above average snow fall is expected to be incidental. I also acknowledge that wild horses have survived harsh winters at population numbers above the proposed AML however, during these times allowable use standards have been exceeded and resource impacts, particularly to riparian areas have occurred. In addition, less than desirable body conditions have been evident on some of these horses that survived these harsh winters.

The Interdisciplinary Team reviewed documents provided by the commenters and determined whether they are relevant peer-reviewed science or not (e.g. opinion, non-peer reviewed science, or not applicable to the alternative(s) actions or their effects on the environment). The review is filed in the project record and comments are responded to in the Response to Comments (Appendix F of the EA). Where comments led to a modification or clarification in the final EA it is noted in the Response to Comments.

Other Alternatives Analyzed

Alternative 1

Alternative 1 is described in the EA p. 15. It is considered a No Change alternative because it would retain the same AML of 55-65 and the same direction in the Forest Plan which calls for a maximum herd of 60 horses. The 1975 *Ochoco Wild and Free-Roaming Horse Management Plan*, based on a 1975 *Environmental Analysis Report* outlined management actions to maintain a herd “of about 60 horses.” In 1989 the Forest Plan stated, “wild horses within the original territory will be managed at a maximum of 60 head.” This Forest Plan direction does not provide for flexibility in determining the appropriate population level which may need to be changed over time due to changes in climate, available forage, or resource conditions. I did not select Alternative 1 because it does not address the purpose and need for action.

Alternative 3

The Forest Service analyzed an alternative that addressed public concerns about genetic variability of the herd and keeping a larger herd size to provide a buffer against harsh winters, wildfires, or other disasters. Alternative 3 is described in the EA on pp. 16-18. I did not select Alternative 3 because the analysis shows that the higher number of horses is not sustainable when considering the limiting factor of winter range forage without the expectation of resource impacts to riparian areas. Analysis in the EA shows a forage over utilization on the winter range. This would result in continued exceedance of allowable use standards on riparian areas within the wild horse winter range.

Other Alternatives Considered

Several other options were considered but not analyzed in detail. These options and the reasons they were not analyzed in detail are explained in the EA at p. 20-21.

I considered public comments that suggested an alternative be considered that included an AML range around the current population level and also include efforts to improve genetic health of the herd. While such an alternative would address the genetic health concern the numbers would be similar to Alternative 3 therefore, I would expect the same issues with overuse of riparian areas in the wild horse winter range as those expected under Alternative 3.

Although there were several recommendations to increase the size and expanse of the Territory, the WFRHBA and associated regulations clearly limit the expanse of the Territory to what was occupied at the passage of the Act in 1971. The analysis for the 1975 EA established the Territory boundary and the time has long since passed for either administrative review or legal challenge of that determination.

Public Involvement

Prior to scoping, the Forest Service undertook public involvement activities. The Forest Service held a public open house in November 2015 to discuss the upcoming revision to the management plan. Forest Service staff participated in a public wild horse working group that began in late 2015. The group was facilitated by Central Oregon Intergovernmental Council (COIC) and brought together stakeholders to explore social and management issues surrounding wild horse management. From November 2017 through June 2018, Forest Service staff participated in another stakeholder group termed the Sounding Board. Convened by the COIC to solicit feedback on matters related to wild horse management on the Ochoco NF, the group provided a diverse public response to various elements of territorial plan. Forest Service staff shared

information on wild horse management planning at the invitation of several groups: Crook County Court, Bend Chapter Oregon Hunters Association, and Rotary Club of Crook County.

Scoping for this project began with the announcement of in a June 19, 2017 letter addressed to the Forest's project mailing list. The letter was distributed to 127 individuals, organizations, and government agencies. The proposal was also published to the Ochoco National Forest Service website on June 17, 2017.

The public was provided an opportunity to comment on the analysis in the draft EA from April 17, 2020 to May 18, 2020. The interdisciplinary team reviewed all comments and provided written responses in Appendix F of the EA.

Consultation with Tribes and Government Agencies

Tribal Governments

In February 2017, the tribal governments of the Burns-Paiute, Confederated Tribes of the Warm Springs, and Klamath Tribes were contacted via letter with an invitation to participate in the Section 106 process. There has been no response from the Tribes.

U.S. Fish and Wildlife Service

A Representative of the Fish and Wildlife Service participated in public working group meetings and the sound board meetings that are described in Chapter 1. Proposed activities associated with wild horse management would generally not impact wolves and would therefore not be expected to influence species use of the area. The Forest has determined that proposed activities associated with wild horse management May Effect, not Likely to Adversely Affect (NLAA) gray wolf for all alternatives. On March 17, 2020 the Forest received concurrence from USFWS that implementation of numerous activities (including wild horse management) with associated Project Design Criteria is not likely to adversely affect the gray wolf (EA p. 175).

Oregon Department of Fish and Wildlife

ODFW staff have participated in the Wild Horse public working group, co-chair group, and Sounding Board and were consulted on big game populations and use within the Big Summit Territory which was used in the determination of the AML calculated under Alternative 2.

Oregon State Historic Preservation Office

The Forest has completed necessary reporting for the State Historic Preservation Office (SHPO) following guidelines in the Regional Programmatic Agreement among USDA-Forest Service, the Advisory Council on Historic Preservation, and the Oregon SHPO.

Legal Requirements and Policy

In reviewing the EA and actions associated with Alternative 2, I have concluded that our decision is consistent with the following applicable laws and requirements:

The National Environmental Policy Act (NEPA)

NEPA establishes the format and content requirements of environmental analysis and documentation as well as requirements for public involvement and disclosure. The entire process of preparing this environmental assessment was undertaken to comply with NEPA.

Wild Free-Roaming Horses and Burros Act of 1971

I find this decision to be consistent with the WFRHB Act as it manages wild free-roaming horses in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands. The management activities falling under this decision are intended to be implemented at the minimal feasible level. The selected alternative was developed in consultation with the wildlife agency of the State in order to protect the natural ecological balance of all wildlife species which inhabit the project area. Forage allocations under this decision took into consideration the needs of other wildlife species which inhabit the project area. This decision determines the appropriate management levels of wild free-roaming horses on the public lands of the Territory; it determines that any animals over the appropriate management level are excess animals; and provides direction on how to achieve appropriate management levels. The Ochoco National Forest has consulted with the United States Fish and Wildlife Service and the Oregon department of Fish and Wildlife in making these determinations. Under this decision removal of excess horses will be done in the order of priority as prescribed by the Act.

The National Forest Management Act (NFMA)

I find this decision to be consistent with the long-term management goal as stated in the Ochoco National Forest Plan as amended: “Provide forage for wildlife and domestic livestock in a manner consistent with other resource objectives and environmental constraints, while maintaining or improving ecological condition and plant community stability.” LRMP 4-11. The decision is consistent with management objectives and standards and guidelines except as provided for in the Forest Plan Amendment. This Decision amends the Forest Plan (LRMP 4-140 and LRMP Appendix I) as described in Appendix B of this Decision. I find the amendments to be non-significant based on the analysis in the EA.

Effects to Management Indicator Species identified in the Ochoco LRMP were analyzed (see “Aquatic Species” and “Wildlife” sections of the EA). The selected alternative would not contribute to a negative trend in viability on the Ochoco national Forest for any Management Indicator Species.

The decision is consistent with standards and guides related to preventing the introduction and spread of invasive plant species because prevention measures are incorporated into the project design.

The Endangered Species Act of 1973, as amended

Biological Evaluations were prepared to document the possible effects of wild horse management to threatened, endangered, and Sensitive species within the project area. The selected alternative will have no impact on proposed, endangered, threatened or sensitive plant species or aquatic species (EA Chapter 3). The project may affect but not likely to adversely affect gray wolf.

Civil Rights and Environmental Justice

There have been no issues or concerns raised regarding the interests of Native American Tribes. There are no known direct, indirect or cumulative effects to Native Americans, minority groups, women, or civil rights beyond effects disclosed in the Ochoco National Forest Land and Resource Management Plan.

Executive Order 12898 on environmental justice requires federal agencies to identify and address any disproportionately high and adverse human health or environmental effects on minority and low income populations. The selected alternative would have no disproportionately high or adverse effects to minority or disadvantaged groups qualifying under the environmental justice order. Initial scoping raised no issues or concerns related to the principles of environmental justice. Implementation of the selected alternative would not cause disproportionately high and adverse human health effects, high or adverse environmental effects, substantial environmental hazard or effects to differential patterns of consumption of natural resources.

Finding of No Significant Impact

The EA provides a thorough analysis of the expected environmental effects of Alternative 2. The information in the EA is more than adequate for me to determine that the effects are not significant.

Context

Based on the documentation in the Revised EA and project record, I have determined the following with regard to the context of the project: The Big Summit Territory consists of 25,434 acres on the 845,498-acre Ochoco National Forest. It comprises about 3% of the Ochoco National Forest. Besides being home to the Ochoco wild horses, the management allocations in the Territory are General Forest, General Forest Winter Range, Old Growth, Recreation Trail Visual Corridor, and Lookout Mountain Recreation Area (EA pp. 12-13). Big Summit Territory is one of the smallest of 19 wild horse territories and HMAs in Oregon (EA p. 201). The Ochoco wild horses are considered as part of the metapopulation of all wild horses in the western United States (EA p. 10).

Intensity

Based on the documentation in the Revised EA and project file, I have determined the following with regard to the intensity of the project (40 CFR 1508.27).

1. *Impacts that may be both beneficial and adverse.* Beneficial and adverse impacts of implementing the selected alternative have been fully considered within the EA. My decision will have neither a significant beneficial or adverse impact because the project activities will occur on small areas such as bait trapping sites, improvements to the riparian areas would be over time and on a relatively small area compared to the size of the territory.
2. *The degree to which the action affects public health and safety.* Management activities such as fertility control and gathers of wild horses do not affect public health or safety.
3. *Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.* There are no effects to unique characteristics such as historic or cultural resources. The project area does not include any Wilderness, park lands, prime farmlands, Wild and Scenic Rivers, Inventoried Roadless Areas, Research Natural Areas, or ecologically critical areas.
4. *The degree to which the effect on the quality of the environment is highly controversial.* As used in the Council on Environmental Quality's guidelines for implementing NEPA, the term "controversial" refers to whether substantial dispute exists as to the size, nature or effects of the major federal action. The environmental effects described in the EA are based on the best available science. Although some aspects of wild horse management are socially controversial,

there is no evidence to demonstrate a substantial dispute within the science community about the effects as described in the EA. Materials referenced in public comment were reviewed and addressed in the Consideration of Public Comment (EA Appendix F), and elsewhere in the project file.

5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks. My decision does not involve highly uncertain, unique or unknown risks and is based on best available science and agency experience with similar types of actions. The activities authorized by this decision are consistent with recent recommendations of the Wild Horse and Burro Advisory Board.

6. The degree to which the action may establish a precedent for future actions with significant effects. Future actions that are not addressed in this decision would be subject to additional NEPA analysis.

7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment.

The EA considered other actions with potential to affect the resources of the Territory and create a significant cumulative effect. No cumulatively significant impact is anticipated. Ongoing and reasonably foreseeable future actions within the Territory are limited to small tree thinning and fuels treatment, road and trail use and maintenance, and ongoing seasonal sheep grazing. Cumulative effects analysis for the selected alternative are discussed on pages 60-61, 75, 82, 84, 86, 88, 92-93, 95, 100, 122, 137-138, 158, 159, 160, 167, 171-172.

8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historic resources.

The Big Summit Territory was analyzed for potential impacts to cultural resources of historic properties that have been determined to be eligible for inclusion in the National Register of Historic Places as well as cultural resources not yet evaluated (EA pp. 168-173). The Forest Service has consulted with the State Historic Preservation Office (SHPO) under the Programmatic Agreement (EA p. 175).

9. The degree to which the action may adversely affect endangered or threatened species or their habitat that has been determined to be critical under the Endangered Species Act of 1974.

Biological Evaluations have been completed to assess potential impacts to threatened or endangered species. There are no known threatened or endangered aquatic species or their critical habitat within the Territory (EA p. 104). The project was determined to May Effect, not Likely to Adversely Affect gray wolves (EA p. 83). No other terrestrial or botanical listed species occur in the Territory.

10. Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

I find that the actions authorized by this decision will not violate any Federal, State, or local laws that were imposed for the protection of the environment. Applicable laws and regulations were considered in the EA.

Pre-Decisional Administrative Review (Objection)

This project is subject to pre-decisional administrative review pursuant to 36 CFR 218, Subpart B (also called the “objection process”). The full text of the rule can be found here:

<http://federal.eregulations.us/cfr/title/5/28/2013/title36/chapterII/part218>.

Only individuals or organizations that submitted specific written or oral comments during a designated opportunity for public participation (scoping or the comment period on the draft EIS) may object (36 CFR 218.5). Notices of objection must meet the requirements of 36 CFR 218.8. Objections can be submitted in writing, either electronically or in hard copy, and must be filed with the Reviewing Officer within 45 days from the date of publication of the legal notice announcing the opportunity to object; the legal notice is published in The Bulletin newspaper of Bend, Oregon. The legal notice publication date is the exclusive means for calculating the time to file an objection. Those wishing to file an objection to this decision should not rely upon dates or timeframe information provided by any other source. Mailed objections must be received before the close of the fifth business day after the objection filing period closes.

Incorporation of documents by reference is not allowed, except for the following list of items that may be referenced by including date, page, and section of the cited document, along with a description of its content and applicability to the objection: 1) all or any part of a federal law or regulation; 2) Forest Service directives and land management plans; 3) documents referenced by the Forest Service in the subject EIS; or 4) comments previously provided to the Forest Service by the objector during public involvement opportunities for the proposed project where written comments were requested by the responsible official. All other documents must be included with the objection.

Minimum requirements of an objection are described at 36 CFR 218.8(d). An objection must include a description of those aspects of the proposed project addressed by the objection, including specific issues related to the proposed project; if applicable, how the objector believes the environmental analysis or draft decision specifically violates the law, regulation or policy; suggested remedies that will resolve the objection; supporting reasons for the reviewing officer to consider; and a statement that demonstrates the connection between prior specific written comments on the particular proposed project or activity and the content of the objection, unless the objection concerns an issue that arose after the designated opportunities for comment.

There are several options for submitting objections. **At this time, we strongly encourage you to submit objections electronically.**

Electronically

Electronic objections will be accepted through the Forest Service online comment system available at <https://cara.ecosystem-management.org/Public/CommentInput?project=46228>

Note that once-monthly updates to the system can briefly interfere with the public’s ability to upload objections.

An alternative method for electronic submission is to this email: objections-pnw-regional-office@usda.gov Please put OBJECTION and the project name in the subject line.

Electronic objections must be submitted as part of an actual e-mail message, or as an attachment in Microsoft Word (.doc or .docx), rich text format (.rtf), or portable document format (.pdf) only. For electronically mailed objections, the sender should receive an

automated electronic acknowledgement from the agency as confirmation of receipt. If the sender does not receive an automated acknowledgement of receipt of the objection, it is the sender's responsibility to ensure timely receipt by other means.

Postal Mail or Delivery

Objections delivered by mail must be postmarked by the closing day of the objection filing period and received before close of the fifth business day following the end of the objection period. If you are using postal mail or carrier (UPS/FedEx), please notify Debbie Anderson (debbie.anderson2@usda.gov or 503-808-2286) so that we may ensure your objection has been received.

Regional Forester (Reviewing Officer)
Pacific Northwest Regional Office
Attn: 1570 Objections
P.O. Box 3623
Portland, OR 97208-3623

For FedEx or UPS deliveries, please send to:

Regional Forester (Reviewing Officer)
Pacific Northwest Regional Office
Attn: 1570 Objections
1220 SW Third Avenue
Portland, OR 97204

Hand Delivery

Hand-delivery/Fax: Objections can only be hand-delivered or faxed by appointment only at this time, due to the current COVID-19 pandemic and Executive Order by Governor Brown. Please call Debbie Anderson at 503-808-2286 to make an appointment to hand-deliver your objection or request the fax number.

Implementation

Implementation of this project is expected to begin in 2021 as soon as the final Decision Notice is signed. Implementation will begin with consecutive gathers over several years to remove excess wild horses.

Contact Person / Further Information

Project records are on file at the Ochoco National Forest in Prineville, Oregon. The Environmental Assessment, Draft Decision Notice and other project documents have been made available on the internet at <https://www.fs.usda.gov/project/?project=46228>

For additional information concerning the specific activities authorized with this decision please contact Tory Kurtz, Range Management Specialist, 541-416-6407, (tory.kurtz@usda.gov). For questions about the administrative review process you may contact Beth Peer, Ochoco National Forest Environmental Coordinator, 541-416-6463 (beth.peer@usda.gov)

Responsible Official

The Forest Supervisor of the Ochoco National Forest is the official responsible for deciding the type and extent of management for the Ochoco Wild Horse Herd.

(Signature reserved for final decision)

A. SHANE JEFFRIES
Ochoco National Forest Supervisor

Appendix A – Forest Plan Amendment

Under the National Forest Management Act and its implementing regulations at 36 CFR 219 (2012 Planning Rule), a plan may be amended at any time. Plan amendments may be broad or narrow, depending on the need for the change. I have the discretion to determine whether and how to amend the Ochoco Land Management Plan (Forest Plan) and to determine the scope and scale of any amendment.

Existing	Amendment
<p>Ochoco LRMP at 4-11, third paragraph under "Objectives"</p> <p>Wild horses are found on particular areas of the Big Summit Ranger District. The number of wild horses is currently estimated at 60 and is expected to be maintained at that level indefinitely (See Appendix I, Management of Wild Horses)</p>	<p>Replace paragraph with:</p> <p><i>Conduct wild horse management on the Big Summit Territory to ensure the maintenance of a self-sustaining population of horses in a thriving natural ecological balance with other uses and the productive capacity of their habitat. Manage the wild horse herd for a diverse age structure and phenotype, distribution (historic use patterns), and genetic diversity.</i></p>
<p>Ochoco LRMP Appendix I</p>	<p>Add the following paragraph:</p> <p><i>Desired Condition: A viable, free-roaming wild horse herd (consistent with the desire of the herd management plan in effect at the time of project level planning) that is genetically diverse and is in ecological balance with other approved multiple uses is present within the Big Summit Wild Horse Territory. In concert, this leads toward stable or improving habitat conditions.</i></p>
<p>Ochoco LRMP Appendix I</p> <p>Operations Section</p>	<p>Replace with:</p> <p><i>Conduct livestock management on the Big Summit Wild Horse Territory to ensure that resource conditions meet management goals and standards. Wild horses will be managed so that the AML can be achieved. Horses above the high AML are considered excess.</i></p> <p><i>Population growth will be managed by:</i></p> <p><i>Conducting gathers to remove excess wild horses as needed to maintain the wild horse herd size within the established AML.</i></p> <p><i>Implementing fertility control methods to slow population growth rates, reduce gather frequency, and decrease the number of excess wild horses which need to be removed over time.</i></p>

Amendment Consistency with Forest Service NEPA Procedures (§ 219.13(b)(3))

The effects of the plan amendment are documented in the Ochoco Wild Horse Herd Management EA following Forest Service NEPA procedures at 36 CFR Part 220. Because the appropriate NEPA documentation for this amendment is an environmental assessment, it is not considered a significant change to the plan for purposes of the NFMA (36 CFR 219.13(b)(3)).

How the 2012 Planning Rule applies to the plan amendment

This forest plan amendment was prepared under the 2012 Planning Rule to the Ochoco Land and Resource Management Plan. The 2012 planning rule has different provisions than the 1982 Planning Rule procedures that the Forest Service used to develop the existing plan.

Purpose of the amendment (36 CFR 219.13(b)(1)).

The purpose of the amendment is to include an Appropriate Management Level (AML), which is a population range, as required by the 1971 Wild Free Roaming Horses and Burros Act (WFRHBA). The current Forest Plan indicates a maximum level of 60 wild horses, rather than a range. There is a need to amend the plan in order to be consistent with the WFRHBA, to update guidance, and to allow adjustments to the AML based on changing conditions. Methods for addressing population growth also need to be updated based on changes that have occurred since the plan was adopted. Changes include the Forest's ability to implement gatherings, the availability of corrals to hold horses, rates of adoption, and fertility controls.

Compliance with the Rule's Procedural provisions

As explained below, this amendment complies with the procedural provisions of the 2012 Planning Rule (36 CFR Part 219.13(b)).

Using the best scientific information to inform the planning process (§219.3):

This forest plan amendment is based on the best available science. The BLM has traditionally been the lead federal agency for Wild Horse and Burro management. The BLM periodically conducts local analyses to determine the best management practices for issues related to wild horse management including fertility control methods and genetic management. As such the BLM has generated and periodically updates a literature review and synthesis which was used in the development of this forest plan amendment. The BLM literature review and synthesis are located in the project record. An IDT analyzed the impacts of this amendment on various resources areas. The IDT members consulted the best available science and cited this in their resource reports which are located in the project record.

Literature and citations submitted during the public involvement periods were reviewed and considered. Some citations were not credible or were not from peer reviewed sources, while others were not relevant or supported what other citations already supported in the analysis. There are scientists and other individuals, generally associated with horse advocacy groups, who contend that the following are not effective or are inhumane:

- immuno-contraceptives,
- certain contraceptives,
- spaying,

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- gelding,
 - genetic translocation,
 - helicopter gathering,
 - bait trapping,
 - reducing herd sizes to facilitate habitat recovery.

The following contentions are summarized from the comments received during phases of public involvement:

- “It is time the government realizes that the wild horses can be put to much better use on the land (it is a myth that they are overpopulated) where they will help to heal the ecosystem and help to prevent wildfires.”
- “Castration of stallions and "screwing" sex ratios is playing god.”
- “Using current conditions as a proxy for effects of past actions is not fair or right.”
- “Concerning Population Control Methods, I oppose the cruel, insensitive & unwise tampering with the horses’ reproductive physiology as by PZP and GonaCon injection. PZP in particular produces serious short- & long-term consequences that jeopardize the survival of the horses by weakening their immune systems as well as causing social disruption & their extreme suffering & death.”
- “By bringing in outside horses to bolster genetic heterogeneity, you would adulterate the BST herd’s special character & set back many generations of natural adaptation accomplished by this herd.”
- “... based on forage, wildfires, etc. any animal is going to police itself in regards to how many can live on that particular range. ...”
- “The FS also utilized a unreasonable 30% riparian zone calculation to account for transitional areas between dry land and bodies of water, despite only 4% of the winter range is actually designated as ‘riparian.’”
- “The AML must be raised to a minimum of at least 150, which would allow for genetic viability without the need to introduce horses from another area.”
- “As Dr. Cothran explained above, the proposed AML of 12-57 wild horses will result in an almost immediate extinction of this herd.”
- “As spelled out in the 1971 Wild Free-Roaming Horses and Burro Act (WFRHBA), forage allocation needs to be designated "principally but not necessarily exclusively to wild horses.”
- “If more horses have survived it indicates they are not overpopulated and can be sustained in their environment.”
- “The Proposed Action to reduce the current population of 135 horses to within an AML of 12-57 wild horses will cause inbreeding and render the population, which is already showing signs of genetic depression, genetically non-viable.”
- “The original 1971 range is far larger than the tens of thousands of acres in the BSWHT, and the EA is dead wrong to dismiss that fact.”
- “If more horses have survived it indicates they are not overpopulated and can be sustained in their environment.”

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- “This EA continues to present options that are not supported by data; a genetically fragile population that the EA proposes to surgically sterilize is a scientific absurdity as an alternative of preservation.”
 - “Significant scientific controversy over the proposed analysis already exists, as many of its components are contrary to the findings of the NAS in its 2013 report (Attachment 4).”

Providing opportunities for public participation (§219.16; §219.13(b)(2)):

The Forest Service initiated consultation with the three local tribes, the Burns Paiute, the Klamath, and the Confederated Tribes of the Warm Springs, on February 17, 2017. The Forest Supervisor issued a letter dated June 19, 2017 announcing the release of the proposal to write a new herd management (Territorial) plan which included information about the proposal to amend the Forest Plan including the substantive requirements that would be considered. The letter was distributed to 127 individuals, organizations, and government agencies. The proposal was also posted to the Forest Service web page on June 17, 2017. A Notice of Intent to prepare an Environmental Impact Statement was published in the Federal Register on June 21, 2017 (Vol. 82, No. 118). A total of 27 responses were received during the specified time period.

The Forest Service provided additional opportunities for public participation. Forest staff participated in a public wild horse working group beginning in late 2015. The group, facilitated by Central Oregon Intergovernmental Council (COIC), brought stakeholders together to explore social and management issues surrounding wild horse management. Between November 2017 and June 2018, the Forest was involved with a second stakeholder group that was convened by the COIC to elicit feedback on matters related to wild horse management on the Ochoco NF. This group was called a Sounding Board because it provided diverse public response to various elements of a wild horse herd management (Territorial) plan.

Forest Service staff shared information on wild horse management (territory) planning at the invitation of several groups: Crook County Court, Bend Chapter Oregon Hunters Association, and Rotary Club of Crook County. The Forest also held a public open house in November 2015 to discuss the planning revision of the management plan.

Format for plan components (§ 219.13 (b)(4); § 219.7 (e)):

The amendment would apply to the Big Summit Territory within the Ochoco National Forest which is not a separate management area but is referenced in several sections of the current Forest Plan. The sections where wild horse management is referenced are: under the Objectives for Forage and Livestock Use (p. 4-11), in a table summarizing outputs over several decades which indicates the maximum level of horses to be 60 (p. 4-41), under the Forage and Livestock forest wide standards and guidelines which also indicate that will managed for a base herd of 60 (p. 4-140), and Appendix I, Management of Wild Horses which includes objectives and operations for meeting the maximum level of 60. The new AML would permanently replace the current language in all these sections of the Forest Plan.

The plan amendment process (§ 219.13):

This amendment was analyzed as part of the Wild Horse Management Plan project. This project was analyzed as an environmental assessment. The decision is expected to be documented as a

Decision Notice/ Findings of No Significant Impact. The process that was followed for the Wild Horse Management Project is described in the draft Decision Notice.

Objection opportunity (36 CFR 219.50 through 219.62): Opportunity to object is provided as described in the draft Decision Notice page 10.

Effective date (§ 219.17(a)): The amendment will be effective 30 days after publication of its approval.

Documenting Compliance with the Rule's Applicable Substantive Provisions[4]

The planning rule requires that those substantive rule provisions within 36 CFR 219.8 through 219.11 that are directly related to the amendment are applicable to this amendment. The applicable substantive provisions apply only within the scope and scale of the amendment (36 CFR 219.13(b)(5)).

As explained in the discussion that follows, both the purpose and the effects of the amendment are such that provisions in §219.8(a)(2), §219.8(a)(3), §219.9(a)(1), and §219.10(a)(1) are directly related to the amendment. I have applied those provisions within the scope and scale of the amendment.

Scope and scale of the amendment

The scope and scale of the amendment are defined by the purpose for the amendment. The current Forest Plan indicates a maximum level of 60 wild horses, rather than a range. The purpose of this amendment is to establish an AML, which is a population range, for the territory based on winter forage availability and space. The amendment takes into consideration herd size for genetic variability, competition for winter forage with other wildlife species and impacts to other resources such as riparian areas.

This amendment applies to wild and free roaming horse herd management for the Big Summit Territory (see Figure 4, EA page 13). The Big Summit Territory is not a separate management area in the Forest Plan but is referred to in several sections of the plan.

Rule provisions that are directly related to the amendment.

The rule requires that substantive rule provisions (§ 219.8 through 219.11) that are directly related to the amendment must be applied to the amendment. A determination that a rule provision is directly related to the amendment is based on any one or more of the following criteria:

1. The purpose of the amendment (§ 219.13(b)(5)(i));
2. Beneficial effects of the amendment (§ 219.13(b)(5)(i));
3. Substantial adverse effects associated with a rule requirement (§ 219.13(b)(5)(ii)(A)); when an EA or CE is the NEPA documentation for the amendment, there is a rebuttable presumption that there is no substantial adverse effect, and thus no direct relationship between the rule and the amendment based on adverse effects (§ 219.13(b)(5)(ii)(B)).”
4. Substantial lessening of protections for a specific resource or use (§ 219.13(b)(5)(ii)(A)).
5. Substantial impacts to a species or substantially lessening protections for a species (36 CFR 219.13(b)(6)).

Applying these criteria, I have made the following determinations.

The purpose of the amendment is to include an AML in the plan, and the amendment focuses on wild horse populations, grazing, and riparian areas. Because of this purpose, directly related provisions of the rule are therefore §219.8(a)(2), §219.8(a)(3), §219.10(a)(1), and §219.10(a)(5).

These provisions of the 2012 planning rule apply only to the scope and scale of the Forest Plan Amendment. Because the amendment scope focuses on wild horse populations, grazing, and riparian areas within the Big Summit Territory the directly related rule provisions are applied only for those resource areas and within that geographic location.

Applying the rule requirements to the proposed amendments, I find that the proposed amendment would meet those requirements, and therefore no adjustment to the proposed amendment is necessary.

Project and activity consistency with the plan

All future projects and activities must be consistent with the amended plan. The 2012 Planning Rule consistency provisions at 36 CFR 219.15(d) apply only to the plan component(s) added or modified under the 2012 Planning Rule. With respect to determinations of project consistency with other plan provisions, the Forest Service's prior interpretation of consistency (that the consistency requirement is applied only to plan standards and guidelines) applies. (FSH 1909.12, ch. 20, sec. 21.33.)